

REPORT OF PRELIMINARY INVESTIGATION  
TO DETERMINE PUBLIC INTEREST AND NECESSITY  
FOR A STATUTORY ADJUDICATION ON BRUSH CREEK IN  
MENDOCINO COUNTY

261.0  
General  
Brush Creek

This report by the staff of the Division of Water Rights, State Water Resources Control Board (Board), summarizes the results of a preliminary investigation on a petition for statutory adjudication of all rights to the use of water in the Brush Creek watershed in Mendocino County.

The investigation was made by the Board's staff as provided by Section 2525 of the California Water Code to determine if the facts and conditions are such that an adjudication would serve the public interest and necessity.

Introduction

On May 31 and August 18, 1983, petitions for adjudication of water rights to Brush Creek in Mendocino County were received. The first petition was filed by apparent riparian landowners, Louis F. and Russell W. Biaggi. The second petition was received from the California Department of Fish and Game. The petitions assert that the public interest and necessity would be served by a determination of the rights to the water of the stream system through the statutory adjudication procedure provided by Sections 2500 through 2900 of the California Water Code. Copies of the petitions are included as Appendix A.

The Water Code requires that the Board, after a petition is received, conduct a preliminary investigation to determine if an adjudication of the water rights would serve the public interest and necessity. A statutory adjudication will

serve the public interest and necessity if it accomplishes the following:

1. Removes the uncertainty surrounding exercise of unquantified riparian rights.
2. Provides for an orderly distribution of a limited supply of water.
3. Permits a more efficient administration and planning for use of agricultural resources of the watershed.
4. Provides the necessary basis for water users to request watermaster service.
5. Maximizes beneficial use, and prevents waste, unreasonable use, unreasonable method of use and unreasonable method of diversion of water.
6. Protects the public trust by preserving a minimum flow in the stream for wildlife enhancement and for habitat of anadromous fish and the recreational and esthetic value of Manchester Beach State Park.

#### Scope of Investigation

The Board's staff responsible for this investigation visited the area and interviewed a number of interested parties. The staff also observed the area of the stream system and made estimates of streamflow at various locations. Other members of the Board's staff had previously conducted field investigations related to a complaint of unauthorized diversion and to protests of an application to appropriate water from Brush Creek. Information gathered in those investigations has been reviewed and used wherever possible for the purpose of this preliminary investigation.

#### Brush Creek Watershed

Brush Creek, tributary to the Pacific Ocean, drains a watershed of about 16

square miles within Township 13 North, Range 15, 16, and 17 West, Mount Diablo Base and Meridian. The watershed ranges in elevation from sea level to about 1,300 feet in the western slopes of the Coast Range. The stream drains into the ocean about  $1\frac{1}{2}$  miles northwest of the community of Manchester. See attached State Water Resources Control Board Map (SWRCB map).

The upper watershed consists of moderate to steep sloping timberlands. In the lower reach, the stream flows through lowlands relatively clear of trees for about four miles before discharging into the ocean. Two tributaries, Spanish and Mill Creeks, drain about 2.7 square miles of watershed.

Lagoon Creek, a tributary stream located south of the Brush Creek watershed, maintains a perennial coastal lake from which overflow passes to Brush Creek by way of a slough. Since 1950, water diverted from this coastal lake has served as supplemental irrigation water for the lower Brush Creek Basin. No conflict exists over use of the water of Lagoon Creek and it is not recommended to be included in this adjudication.

About 250 to 300 acres of land are irrigated in the lower reach. These lands are planted to pasture or small grains. Irrigation is accomplished almost entirely by sprinkling.

#### Climate

The climate of the area is typical of the coastal region with wet, mild winters and cool, dry summers. Rainfall occurs usually from October through May. However, records indicate measurable precipitation occurs occasionally during the summer months. Table 1 shows average monthly precipitation at the



Point Arena Light Station from 1971 through 1982 and Fort Bragg from 1977 through July, 1983.

#### Water Rights

Three applications to appropriate water from Brush Creek have been received by the Board and its predecessor agencies since December 19, 1914. Two appropriative rights have been licensed, while Application 26951 is pending Board action. Two Statements of Water Diversion and Use have been filed with the Board. See Table 2 for a summary of these filings and the attached SWRCB map for the location of these water users.

#### The Controversy

On June 11, 1981 the Board received a complaint from Russell W. and Louis J. Biaggi of an illegal water diversion by William Hay, Jr., an upstream property owner. The staff conducted a field investigation on July 29, 1981 which found that Hay was diverting water from Brush Creek to nonriparian lands without a permit to appropriate water. Notification was sent to Hay to cease the illegal diversion until a permit for the diversion could be obtained. He failed to comply with the notice. A Board Resolution 81-83 was issued on August 20, 1981 in which the matter was referred to the Attorney General for appropriate action. On June 22, 1982, an injunction was entered by the Superior Court in favor of the Board. Karen J. Hay filed Application 26951 on August 10, 1981 in anticipation of the terms of the injunction.

The applicant proposes to divert water from Brush Creek to storage in a 30 acre-foot (af) off-stream reservoir from November 1 to April 30 and to divert by

direct diversion 1.0 cubic foot per second (cfs) for irrigation from May 1 to October 31. Stockwatering use of 4,050 gallons per day (gpd) year round is also proposed. The combined maximum diversion and storage would be 200 acre-feet per annum.

Hay's application received numerous protests. A majority of the protests allege adverse effects to the fishery, the ecological system, and the local economy. Protestants Louis and Russell Biaggi who irrigate lands downstream also contend that they would be injured during periods of low flow. Hay responded with the contention that in most years adequate water for appropriation existed until the first week of August. The Hays also state in their response that the Biaggis' alleged water demand and use was greater than their (the Biaggis') existing water requirements and use.

The concern of the Department of Fish and Game (Department) is that an adequate bypass flow be available to protect the fishery of the Creek. The applicants and the other protestants could not agree to the flow proposed by the Department. An impasse therefore exists for dismissal of the Department's protest. Currently, the Department is looking to the public trust doctrine to protect the fishery from both new appropriations and new uses of water under unexercised riparian rights.

#### Persons Interviewed

John Biaggi, owner of approximately 138 unirrigated acres upstream of the contesting parties, was neither in favor of nor opposed to the proposed adjudication. He was concerned about the cost and whether the adjudication would be truly beneficial to all parties and interests concerned.

Markee Biaggi was interviewed. Her husband, Louis J. Biaggi, signed the petition for the proposed adjudication. The Biaggi family operates a 237-acre dairy ranch. They believe that unless the rights are adjudicated the amount of water available to them will always be uncertain. This, they believe, will cause hardship in conduct of their dairy business. They also believe that the Brush Creek fishery should be preserved for future generations of Californians.

Robert Caughey, who owns approximately 88 unirrigated acres, has no opinion on the proposed adjudication; however, cost is a concern.

The Department of Fish and Game, a petitioner for the proposed statutory adjudication, is concerned with preserving the steelhead and silver salmon fishery. The Department believes an adjudication would protect the public trust by establishing an instream reservation for minimum flow to the ocean.

Jean Piper, et al., are property holders in the upper Brush Creek watershed who utilize surface water. They would have an interest in a statutory adjudication. Cost was a concern for these property owners.

Winifred Schuler, a property owner of approximately 120 unirrigated acres, expressed concern with the decline of the fishery. She gave no opinion on the proposed adjudication, nor did she have any opinion on whether it would protect the fishery. Cost was a concern to Mrs. Schuler, but she was willing to pay her fair share if the environment is preserved.

Alan Sjolund, local merchant in Manchester, expressed deep concern for preserving the stream for fish and wildlife. The local economy is very



dependent on the recreational values of the creek and he thinks something should be done to protect the stream.

The South Mendocino Coastal Action Committee, an independent interest group, has expressed concern for this watershed. Besides environmental protection, the committee has indicated that the recreational value of the fishery draws substantial revenue to the local economy. A rough approximation of revenue is around \$60 per sportsman per day.

Arthur M. Titus, a property owner of 3.5 acres in the Brush Creek watershed, expressed concern for the availability of water in the creek and preserving the stream for the fish. He is not opposed to the adjudication if it provides better management of the water. Cost is a concern to Mr. Titus.

Claire Titus, a property owner of approximately 170 acres in the Brush Creek watershed, expressed concern for the stream's fishery. She believes that the statutory adjudication would not protect the fish and is opposed to being allocated any portion of the cost.

#### Analysis

The facts determined in the preliminary investigation indicates that in addition to conflicts among agricultural users, other problems revolve around water use for agricultural development versus preservation of anadromous fishery with its recreational and economic benefits to the local area. In the past, agriculture and fish and wildlife lived in harmony with the available water supply. However, as human use of the land and water increased and unusual weather occurred, the balance of surface water availability changed.

Conflicts between major users resulted along with loss of anadromous fish. The public interest would be served where future litigation among waters users and public trust proponents can be minimized or eliminated. An orderly administration of water based upon quantification of water rights and the continued ecological survival of fish and wildlife may be possible through a comprehensive determination of rights and a realistic allocation of stream flows.

A majority of the riparian landowners or their representatives and other interested parties were contacted in person, by telephone or letter during the course of this investigation. A letter has been mailed to all interested parties notifying them that written statements will be accepted prior to the date of the workshop and that any interested persons may attend the workshop to provide further information.

#### Recommendation

The staff's recommendation is that the Board approve the petition.

#### Cost of the Adjudication

The Water Code provides that the entire expenses incurred by the Board, which are properly chargeable to the proceeding, shall be equitably apportioned against the parties. It is Board's intention to require an initial deposit of a substantial portion of the estimated cost at an early stage of the adjudication proceeding. As soon as practicable after the order of determination is filed with the court, the total costs are to be computed and a statement of apportionment of those costs is to be filed with the court and



sent to each party. The initial deposit and fees received would be deducted from each claimant's portion of the costs.

The costs of the proposed Brush Creek adjudication are estimated to total \$20,000 provided a Board hearing is not required during the course of the adjudication. A Board hearing is estimated to cost an additional \$5,000. This estimate is based on 30 claimants participating. The costs are required to be equitably apportioned among the claimants.

In distributing the Board's expenses, several factors are considered including the number of points of diversion, acres irrigated, number of units served for domestic or commercial uses, etc. These factors usually reflect the amount of work in the adjudication process performed by the Board for each claimant. Equitable apportionment of the costs can usually be attained through some combination of the listed factors.

TABLE 1

MONTHLY PRECIPITATION - POINT ARENA\*  
(In Inches)

<u>Year</u>	<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>	<u>JUL</u>	<u>AUG</u>	<u>SEP</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>	<u>ANNAUL TOTAL</u>
1977	1.85	2.98	2.96	0.49	1.32	0.86	0.00	0.39	3.24	1.51	4.02	10.23	29.85
1978	13.40	8.56	6.25	5.59	0.34	0.00	0.00	0.36	3.38	0.00	1.46	1.79	41.13
1979	8.60	14.08	3.31	2.00	1.99	0.06	0.32	0.00	0.29	0.01	9.71	6.98	47.35
1980	6.40	--	3.00	4.50	0.62	0.25	0.00	0.00	0.18	1.45	1.58	6.56	17.98
1981	10.88	4.48	4.37	0.50	1.32	0.22	0.22	0.21	1.17	4.85	14.49	12.44	54.96
1982	9.20	5.66	7.89	6.69	0.00	0.38	0.00	0.10	0.03	4.38	8.85	10.03	53.21

MONTHLY PRECIPITATION - FORT BRAGG\*  
(In Inches)

<u>Year</u>	<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>	<u>JUL</u>	<u>AUG</u>	<u>SEP</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>	<u>ANNUAL TOTAL</u>
1977	1.94	2.43	2.45	0.57	1.93	0.06	0.03	0.58	3.09	2.38	3.83	8.37	27.66
1978	11.24	6.59	5.60	6.23	0.69	0.07	0.07	0.40	2.48	0.04	1.26	2.11	36.78
1979	7.73	10.84	4.91	2.37	1.91	0.03	0.35	0.01	0.31	5.81	9.72	4.78	48.77
1980	2.95	8.73	3.31	3.90	0.50	0.26	0.03	0.01	0.12	2.41	1.49	4.47	28.18
1981	8.89	4.73	3.98	0.58	1.87	0.14	0.03	0.10	1.63	4.55	8.25	8.10	42.85
1982	5.70	4.31	7.16	4.75	0.01	0.43	0.60	0.06	0.29	4.73	9.34	7.42	45.34
1983	7.36	11.67	--	4.84	1.10	0.16	0.46						

\*Climatological data from National Climate Center, Ashville, North Carolina

TABLE 2  
SUMMARY OF FILING WITH THE STATE

<u>Application</u>	<u>Permit/ License</u>	<u>Statement</u>	<u>Owner</u>	<u>Amount</u>	<u>Season</u>
--	--	10519	Louis J. & Russell W. Biaggi	0.60 cfs	Mar 1 - Nov 11
--	--	10520	Louis J. & Russell W. Biaggi	0.60 cfs	Mar 1 - Nov 11
10693	L 7517	--	Louis J. & Russell W. Biaggi	0.36 cfs	May 1 - Nov 11
16815	L 9427	--	Joe E. & Dorothy W. Halliday	0.120 cfs	Jan 1 - Dec 31
26951	--	--	Karen J. Hay	1.01 cfs 30 AF	Jan 1 - Dec 31



